

**MINUTES**  
**TENNESSEE BOARD OF DISPENSING OPTICIANS**

**DATE:** January 14, 2004

**TIME:** 9:00 P.M., C.S.T.

**LOCATION:** Magnolia Room  
Ground Floor, Cordell Hull Building  
Nashville, TN

**MEMBERS**

**PRESENT:** Kelly Godsey, DPO, Chair  
Kathy Hawkins, DPO, Secretary  
Peggy L. Hannah, DPO, Board Member  
Felda Stacey, DPO, Board Member  
Dr. Edward Risby, DPO, Consumer Member

**MEMBERS**

**ABSENT:** Happy Moyer, DPO, Board Member

**STAFF**

**PRESENT:** Sheila Bush, Board Administrator  
Nicole Armstrong, Advisory Attorney  
Barbara Maxwell, Administrative Director  
Melody Spitznas, Administrative Services Assistant  
Jerry Kosten, Regulations Manager  
Lea Phelps, Office of Investigations

With a quorum being present, Mr. Godsey, Chair, called the board meeting to order at 9:02 a.m. on January 14, 2004.

Mr. Godsey welcomed new board member, Dr. Edward Risby to the Board.

**Approval of Minutes**

Ms. Hawkins made a motion, seconded by Ms. Hannah, to approve the minutes from the October 23, 2003 board meeting as written. The motion carried.

**Disciplinary Report**

Ms. Phelps with the Office of Investigations reviewed the disciplinary report with the board. Ms. Phelps stated there were no new disciplinary actions to report at this time. Ms. Phelps told the members of the Board that she has generated a new report, which tracks all of the disciplined dispensing opticians. Ms. Phelps' report contained names, action dates, license number, action

taken and reasons for the action taken on all dispensing opticians who have been disciplined by the Board. Ms. Phelps stated the report was for informational purposes only.

### **Investigative Report**

Ms. Phelps reviewed the investigative report with the board members. Ms. Phelps stated that were eight (8) new complaints received in 2003, with two of those cases being forwarded from 2002. Ms. Phelps stated six (6) of the cases were closed; three (3) with no action and three (3) were referred to the Office of General Counsel. Ms. Phelps stated there are four (4) complaints to be reviewed in the Office of Investigations.

### **Financial Report**

Ms. Bush stated there is no updated financial report as of date. Ms. Bush stated the report is the same as the one previously reviewed by the Board at the October 23, 2003 board meeting.

### **Office of General Counsel Report**

Ms. Armstrong reviewed the OGC report with the Board. Ms. Armstrong asked the newest member to review and sign the Conflict of Interest Statement and return it to Ms. Bush upon conclusion of the meeting.

Ms. Armstrong stated that Mr. Kosten was present to review the rule amendments concerning Orders of Modification and Compliance and personal appearances by disciplined licensees. Ms. Armstrong informed the Board there are four (4) cases open in the Office of General Counsel. Ms. Armstrong explained to Dr. Risby how the Office of Investigations reviews the complaints first and, if warranted, are forwarded to OGC for further action.

### **Jerry Kosten Report**

Mr. Kosten discussed the amendment to Rule 0480-1-.15 pertaining to Orders of Modification and Compliance and personal appearances by disciplined licensees. Mr. Kosten stated a rulemaking hearing was held December 23, 2003 for twenty-six (26) boards, including the Board of Dispensing Opticians. Mr. Kosten explained the Order of Compliance, which is a form that a disciplined licensee would complete at the end of his/her disciplinary or probation period, providing documentation that he/she has met the conditions of the order. The licensee would have to come before the Board and present the Order of Compliance. Mr. Kosten explained the additional amendment to this rule involves licensees wanting to change the conditions of an Order, which could only be done if the condition of the Order is an impossibility. Ms. Stacey made a motion, seconded by Ms. Hannah, to adopt the amendment as written. A roll call vote was conducted and all members present voted in the affirmative. The motion carried.

Mr. Kosten explained the amendment to Rule 0480-1-.12 regarding continuing education. The amendment pertains to documentation to the Board's satisfaction that the course content has applied for approval within the last 12 months or has received approval from the American Board of Opticianry (ABO) or the National Contact Lens Examiners (NCLE). Courses approved

by ABO/NCLE are approved for three (3) years maximum. Should the ABO or NCLE fail to give their approval of the course(s), the Board may review the content and at its discretion, approve or deny the course(s). Approval or denial from ABO or NCLE does not mean that the Board automatically approves or denies the course.

Mr. Godsey stated that the Board has received complaints that courses were given by course providers that were not ABO or NCLE approved. Mr. Godsey said the Board feels it is important to require everyone to meet the same requirements. Ms. Hannah made a motion, seconded by Ms. Stacey to approve the amendment as written. The motion carried. Mr. Kosten stated the rulemaking hearing is to be held May 13, 2004 and he will bring the Board any comments or letters resulting from the hearing. Mr. Kosten stated the rule should become effective around the end of the year.

Mr. Kosten distributed copies of an annual report he initiated, which shows the quantity of rules promulgated by each Board from 1998 to 2003. Mr. Kosten stated the Board of Dispensing Opticians has had eight (8) rules changing in the last six (6) years. Mr. Kosten concluded his report.

Mr. Godsey briefly spoke about the Sunset Review of the Board and stated it will come before the full committee sometime this year. Mr. Godsey thanked Mr. Kosten for all of his hard work.

### **Annual Continuing Education Requirement**

Ms. Hawkins stated each January letters are sent to all dispensing opticians to inform them how many continuing education hours are required for the current year. Ms. Hawkins stated this year the requirement is eight (8) hours total – four (4) for contact lens and four (4) for spectacles and we are also giving them the option to obtain two (2) of the hours via Internet. Ms. Hawkins said that we still require they submit courses for approval thirty (30) days prior to the next board meeting. Ms. Armstrong stated she thought it would be better if the entire rule concerning continuing education was included in the letter. The Board discussed including language on the front of the letter informing the licensees that it was important for them to read the entire letter, especially regarding Internet hours. Ms. Hannah made a motion, seconded by Ms. Stacey to approve the annual continuing education requirement letter with noted changes. The motion carried.

### **Practical Examination**

Mr. Godsey asked Ms. Armstrong what is the process that we take to make changes to the practical exam. Ms. Armstrong questioned if Mr. Godsey was referring to conducting the exam or equipment. Mr. Godsey stated conducting the exam. Ms. Armstrong stated Rule 0480-1-.08 details the procedures for the practical exam, specifically page 7 – Rule 0480-1-.08(1) (c). Ms. Armstrong stated the Board could amend this section of the rule, but it must be done through rulemaking hearing in order to change the content of the exam procedures.

Mr. Godsey recognized Dr. Roy Ferguson and asked Dr. Ferguson for his input regarding administering exams. Dr. Ferguson stated there were areas vital to this profession that are not

being covered. Dr. Ferguson stated he administers dispensing optician exams in North Carolina, Rhode Island and Massachusetts, which takes the Board totally out of the testing business. Dr. Ferguson stated that applicants have a 50% pass rate on tests he administers in Rhode Island and Massachusetts and apprentices experience an 86% pass rate. Dr. Ferguson explained that the test administrator determines if the glasses are adjusted properly. Dr. Ferguson said that there are no measurable guidelines in the field to determine whether an adjustment is correct. Mr. Godsey stated you give predetermined criteria. Dr. Ferguson stated you still have subjectivity and there is nothing in the field saying the normal fitting height is the pupil. Dr. Ferguson said what we have in this field is the failure of education. Dr. Ferguson stated the Board should not be testing whether the examinee can do fitting and adjustment. Mr. Godsey stated that we have a 15% failure rate every year and ABO and NCLE law is not where we are having the failure rate. Mr. Godsey stated it seems important to assure the examinee can fit and adjust spectacles.

Mr. Godsey stated the Board has a major roadblock in front of us to educate. Mr. Godsey stated we would like to require that every person who comes before us has an education and we have a proponent that says we do not need to be educated. Mr. Godsey thanked Dr. Ferguson for his willingness to speak with the Board. Ms. Hannah stated she agrees with the adjustment issue being very important, because opticians should be able to pick out frames to accommodate a patient's needs.

Mr. Godsey suggested the Board could have Dr. Ferguson and a few other vendors make presentations to the Board and let us look at it to obtain better insight on what we are talking about – the cost, we don't want to make it astronomical to the applicant. Mr. Godsey asked Ms. Armstrong about the legalities of taking the exam out of the Board's hands and having an individual test applicants. Ms. Armstrong stated she would have to do some research and would like the issue placed on the agenda for the next board meeting. Dr. Ferguson will send an overview to Ms. Bush of what his exam involves. Dr. Ferguson stated applicants are sent a sheet on what areas are covered and has had no complaints from applicants being blindsided regarding what the test covers. Dr. Ferguson stated he requires access to at least five or six lensometers/vertometers and said it is important for applicants to be comfortable with the equipment they are working with. Ms. Hawkins asked Dr. Ferguson what the timeframe is regarding applicants receiving their test results. Dr. Ferguson stated approximately ten days – first he notifies the Board, then the examinee. Mr. Godsey thanked Dr. Ferguson for his input and willingness to speak to the Board.

### **Administrative Report**

Ms. Bush reviewed the administrative report with the Board, informing them she had closed 59 apprentice files due to lack of activity. Ms. Hawkins made a motion, seconded by Ms. Hannah, to ratify the closing of the 59 apprentice files. The motion carried.

Ms. Bush informed the board as of December 31, 2003 there are 826 active licensees; 174 retired licensees, 332 who failed to renew their license; 127 active apprentice files; 29 licenses have been revoked; 56 applications in process; and 91 licensees are deceased. Ms. Bush concluded her report.

### **Review and Ratification**

Ms. Hawkins made a motion, seconded by Ms. Stacey to ratify the following new dispensing optician licensees: **Tabitha Ann Wolfe Abston, Jessica Lynn Hale; Amy Catherine Newman; and Kathleen Witte Tanis.** The motion carried.

Ms. Hawkins made a motion, seconded by Ms. Stacey to ratify the following reinstatements: **Susan H. Poersch, Aaron L. Wilson; and Mary A. Hale.** The motion carried.

Ms. Bush informed the Board that the following dispensing opticians' licenses had expired and they were in the process of reinstating, however they have been working on a lapsed license: **Debbie Ross; Melinda Rosenthal; and Gena Stallings.** Ms. Hannah made a motion, seconded by Ms. Hawkins to reinstate the aforementioned, with the stipulation each abides by the Policy Statement regarding Licensees Working on a Lapsed License. The motion carried.

### **Requests for Waiver of Continuing Education Requirement**

Upon review of the continuing education requests for approval or waiver, Ms. Hannah had a letter from **Wanda Gail Bonds** asking for a waiver of her 2003 continuing education hours. Ms. Bonds had a letter from her physician stating she had surgery and is on medication. The letter from Ms. Bonds' physician was dated 11-06-03. Mr. Godsey stated we receive these requests at every meeting at the end of the year because licensees wait until the end of the year to obtain their continuing education requirements. Ms. Hannah made a motion, seconded by Ms. Hawkins to deny the waiver and require Ms. Bonds to make up the eight (8) deficient hours for 2003 in 2004, along with the 2004 CE requirement, but she does not have to pay a penalty, unless she fails to obtain the hours. Ms. Stacey recused herself from voting on this issue, as she knows Ms. Bonds. The motion carried. The Board based their decision on there were several opportunities to obtain CEU's before September 2003.

Ms. Hawkins reviewed a letter from **Wanda Pursley**, who had surgery in July and August 2003. Ms. Pursley's physician wrote a letter stating that due to complications, Ms. Pursley is disabled and unable to work and it may be six (6) or more months before she can return to work. Ms. Hannah made a motion, seconded by Dr. Risby to deny the waiver and require Ms. Bonds to make up the eight (8) deficient hours for 2003 in 2004, along with the 2004 CE requirement.

Mr. Godsey reviewed a request from **Teresa Jones**. Ms. Jones attended part of the continuing education courses in November 2003, but had to leave the session early due to being uncomfortable from a recent surgery. Ms. Jones requested to make up the hours she is deficient for 2003 in 2004. Ms. Hawkins made a motion, seconded by Ms. Hannah to allow Ms. Jones to make up the additional hours in 2004. The motion carried.

### **Continuing Education Requests for Approval**

**National Academy of Opticianry (NAO)** – to be held in Tampa, FL – February 28 – 29, 2004; Tallahassee, FL – March 6 – 7, 2004; and Jacksonville, FL – April 17 – 18, 2004. Ms. Stacey

made a motion, seconded by Ms. Hawkins to approve the courses offered by the NAO. The motion carried.

**Frank Adkins – Remote Area Medical (RAM)** – Ms. Hawkins reviewed a request from RAM, and explained that it is a 12-hour volunteer workshop (for 12 hours work, you receive 8 hours CE and for 6 hours work, you receive 4 hours CE). Ms. Hawkins made a motion, seconded by Ms. Stacey to approve the continuing education hours. The motion carried.

**Roy Ferguson’s The Learning Curve** – to be held February 4, 2004 and March 4, 2004 in six locations – Nashville, Memphis, Knoxville, Cookeville, Chattanooga and Johnson City, TN. All courses are ABO/NCLE approved. Mr. Godsey made a motion, seconded by Ms. Hawkins to approve the continuing education hours. The motion carried.

**Tennessee Dispensing Opticians Association (TDOA)** – to be held in May, October and November 2004 in Nashville, Knoxville, Memphis, Johnson City and Franklin, TN. Mr. Godsey made a motion, seconded by Ms. Hawkins to approve the continuing education hours. The motion carried.

#### **Other Board Business**

With no other business to conduct, Ms. Hannah made a motion, seconded by Ms. Stacey to adjourn the meeting. The motion carried and the meeting adjourned at 11:00 a.m.

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